

REMARKS / ARGUMENTS

The present application includes pending claims 1-37, all of which have been rejected. By this Amendment, claims 11-20 and 34-35 have been amended, as set forth above, to further clarify the language used in these claims and to further prosecution of the present application. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 11-20, 34 and 35 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-7, 10, 11-17, 20, 21-27, 30-32, 34 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USPP 2002/0104099 ("Novak"), in view of USP 6,628,303 ("Foreman"). Claims 8-9, 18-19 and 28-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Novak and Foreman, in view of USP 7,284,032 ("Weber"). Claims 33, 35 and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Novak and Foreman, and in view of Applicant's admission of fact. The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

I. EXAMINER'S RESPONSE TO ARGUMENTS

The Examiner states the following at pages 4-6 of the Office Action:

...

As the Examiner stated in Office Action Page 7 "it is unclear within the disclosure of Novak if the existing media content is modified with additional media content to produce the media program and if the editing

process includes editing previously created metadata based on said additional media content" and therefore provides the Foreman reference to supplement the teachings of Novak.

...

It is the Examiner position that Foreman demonstrates at least two instances of the claimed "metadata" and that Foreman's teaching of "metadata" created during the editing process has not been identified as the claimed "previously created metadata". In particular, Foreman describes "clips" and "shots", where the process of Figure 16 is "an example operation in which the clip descriptions and shot descriptions are synchronized" (Col. 10 Lines 56-58). At Step 226 of Fig. 16 metadata is associated with a media program ("Associate Data File With a Clip" of Fig. 16, as described in Col. 10 Lines 60-65). The Examiner notes that "metadata is associated with a media program" using the interface of Figure 8 (as described in Col. 9 Line 20-Col. 10 Line 35). Then at Step 230, a process of editing the previously created metadata (from Step 226) is performed based on additional media content ("description modifies its duration and pointer to reference the new clip description", as shown in Fig. 16 and described in Col. 10 Line 65-Col. 11 Line 2; with further reference to Col. 11 Line 3-Col. 12 Line 31).

The Applicant respectfully disagrees. It seems the Examiner has misinterpreted the terms "shot" and "clip", as well as the corresponding shot/clip description synchronization in Fig. 16 of Foreman. As explained in the 11/5/2009, 3/19/2010 and 4/16/2010 responses, Foreman discloses the use of a storyboard interface 52 (or storyboarding) as way for the user to plan a video program to be prepared. More specifically, the storyboard interface 52 (see Fig. 5) is simply a template that outlines the future video program to be prepared (e.g., it describes a title 70 and a sequence of descriptions 72 for each shot planned in the video program). In other words, a "shot" is simply a part of the storyboard

template 52, and it provides the description of a planned segment of video. See Foreman at col. 7, lines 39-64.

Foreman uses the term “**clip**” to designate the actual captured video data, which can be associated with a given template “shot”. Foreman also uses the term “**data file**” to refer to the data structure 88 (Fig. 7), which is used for producing the actual motion video program, or the clip. See Foreman at col. 8, lines 16-49.

Obviously, **at the time of creating the storyboard template, the “shot” templates (e.g., any of the shot templates in Fig. 5) are not yet associated with corresponding video clips.** The process of associating the shot templates to the corresponding video clips is described in Fig. 16.

More specifically, in *step 220 (Fig. 16)*, a “data file” for the video information is created (i.e., a data structure, such as data structure 88, for video information is created). **It is important to note that at this point, no actual video clip has been taken/captured and, therefore, the “data file” is not associated with any media/video and it is not metadata for any specific media/video.**

It is only after *steps 222-224*, that the video clip has been captured.

At **step 226**, the data file created in step 220 is now associated with the captured video clip, and video clip description is stored in the data structure 88 of the data file. **(NOTE: This step is equated by the Examiner to associating metadata with a media**

program. In other words, this is when, according to the Examiner, the “metadata” is actually created).

At *step 228*, a message is passed to the storyboard interface 52, indicating that for a given “shot” a corresponding clip (with a certain duration) has been created.

At **step 230**, the “shot” description within the storyboard interface 52 is updated with the clip duration and pointer to the newly created video clip. More specifically, step 230 updates fields 98 and 100 (fig. 6) within the storyboard 86. **(NOTE: This step is equated by the Examiner to “editing ... said previously created metadata”).**

In the above citation, the Examiner states:

At Step 226 of Fig. 16 metadata is associated with a media program ...
Then at Step 230, a process of editing the previously created metadata.

The Applicant notes that **the Examiner (see above Office Action citation) has equated Foreman’s “data file” to Applicant’s “metadata”. The Examiner has also equated Applicant’s “editing of previously created metadata” to the process in step 230 (Fig. 16). The Applicant disagrees.**

As explained above, **Foreman, in step 230 (Fig. 16), simply updates the “shot” template description** (storyboard template fields 98 and 100 from Fig. 6) within the storyboard interface 52 **(and not the “data file”, which is the alleged “metadata”)**, with the clip duration and pointer to the newly created video clip. **Foreman, in step 230 (Fig. 16) or any remaining figure for that matter, does not disclose that the data file**

(i.e., the alleged “metadata”) associated with the captured video clip is updated in any way. In addition, Foreman (in step 230 or any other step) does not disclose that the data file (i.e., the alleged “metadata”) associated with the captured video clip is edited based on additional media content.

The Examiner also states the following in page 6 of the Office Action:

The Examiner notes that "editing the previously created metadata" is performed by way of the interface of Figure 9 (as described in Col. 11 Line 3-Col. 12 Line 31). The Examiner additionally notes that Forman discloses "[a]fter clips for a movie have been captured, more finely detailed editing of the video program can be started" (Col. 11 Lines 3-4).

The Applicant notes that Fig. 9 of Foreman (and its corresponding description at col. 11, l. 3 – col. 12, l. 27) describes several selectable interfaces for performing a detailed editing of the video program, and not the data file (i.e., the alleged “metadata”) created in step 220.

To summarize:

- At step 220 (Fig. 16), a “data file” for the video information is created. However, at this point of the “data file” creation, no actual video clip has been taken/captured. Therefore, since the “data file” is not associated with any media/video, it does **not** qualify as metadata.
- At step 230, the “shot” description within the storyboard interface 52 is updated with the clip duration and pointer to the newly created video clip.

More specifically, step 230 updates fields 98 and 100 (fig. 6) within the storyboard 86. Step 230, however, does **not** update in any way the data file (i.e., the alleged "metadata") associated with the captured video clip. In addition, Foreman (in step 230 or any other step) does not disclose that the data file (i.e., the alleged "metadata") associated with the captured video clip is edited based on additional media content.

- The Examiner also relies on Fig. 9 of Foreman (and its corresponding description at col. 11, l. 3 – col. 12, l. 27). However, Fig. 9 describes several selectable interfaces for performing a detailed editing of the video program, and **not** the data file (i.e., the alleged "metadata") created in step 220

Therefore, the Applicant maintains the combination of Novak and Foreman does not disclose or suggest at least the limitation of "editing, at said first geographic location, previously created metadata associated with said media content, said editing based on said additional media content," as recited by the Applicant in independent claim 1.

II. Rejection Under 35 U.S.C. § 101

Claims 11-20, 34 and 35 are rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. The Applicant respectfully traverses the rejection. Nevertheless, to further prosecution, the Applicant has amended claims 11-

20 and 34-35 to overcome the 35 U.S.C. § 101 rejection by reciting a “non-transitory computer-readable medium”.

A. Support for “Computer-Readable Medium” in the Specification

The Applicant submits that 37 CFR § 1.75(d)(1) states the following:

The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.

The Applicant respectfully submits that the specification in the present application does provide antecedent support for the subject matter claimed in claims 11-20 and 34-35. Referring to the specification at FIG. 11 and paragraphs 89-100, for example, discloses a PC 1100 using media players 1108 (e.g., CD, DVD, PVR, MP3). Accordingly, the Applicant respectfully submits that the specification discloses that, for example, the PC 1100 runs the media exchange software (1111) and may comprises a “computer-readable medium” (e.g., the CDs, DVDs, etc. being read by the media players 1108; or the storage 1106).

In addition, the specification states that methods for producing and delivering media content “can be implemented in hardware, or software, or a combination of both hardware and software” (see e.g., paragraphs 98-100). Additionally, the specification explains a hardware configuration that includes a PC running the media exchange software and using memory and various media players for reading various media. A

person having ordinary skill in the art would recognize that, for example, memory (as well as the CDs or DVDs used by the media players 1108) qualify as computer-readable medium capable of storing a computer program or software. The Applicant respectfully submits that the specification provides sufficient antecedent basis for a computer-readable medium.

B. Permissible Use of "Computer-Readable Medium" in the Claims

In reference to the use of "computer-readable medium", the Examiner is referred to p. 52 of the "Interim Guideline for Examination of Patent Applications for Patent Subject Matter Eligibility" (IGPSME), which states the following:

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer... Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized.

See the IGPSME at pages 52-53. Even though data structures not claimed as embodied in computer-readable media, as well as computer programs claimed as computer listings per se, are not statutory subject matter, the Applicant points out that **claims 11-20 and 34-35 of the present application do not fall under any of the**

above mentioned non-statutory subject matter categories. The Examiner is referred to the following IGPSME citation:

In contrast, **a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships** between the computer program and the rest of the computer which permit the computer program's functionality to be realized, **and is thus statutory.** See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Computer programs are often recited as part of a claim. **USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine.** In such a case, **the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program.** Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory.

See the IGPSME at page 53. Claims 11-20 and 34-35 in the present invention relate to **computer-readable medium for storing a computer program having at least one code section for producing and delivering media content. Furthermore, the code sections may be executed by a computer for causing the computer to perform the method steps** recited by, for example, claims 1-10. Therefore, claims 11-20 and 34-35 define statutory subject matter as per the above IGPSME citation.

The Examiner is also referred to the following MPEP citation for support:

When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive

material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

See MPEP § 2106.01. The Applicant, therefore, submits that claims 10-18 are directed to statutory subject matter (i.e., a "computer-readable medium").

C. Non-Transitory Computer-Readable Medium

The Examiner is referred to the following citation from the 1/26/2010 guidelines by USPTO Director David J. Kappos regarding "Subject Matter Eligibility of Computer Readable Media":

The USPTO recognizes that applicants may have claims directed to computer readable media that cover signals *per se*, which the USPTO must reject under 35 U.S.C. § 101 as covering both non-statutory subject matter and statutory subject matter. **In an effort to assist the patent community in overcoming a rejection or potential rejection under 35 USC § 101 in this situation, the USPTO suggests the following approach. A claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 USC § 101 by adding the limitation "non-transitory" to the claim.** *Cf. Animals - Patentability*, 1077 Off. Gaz. Pat. Office 24 (April 21, 1987) (suggesting that applicants add the limitation "non-human" to a claim covering a multicellular organism to avoid a rejection under 35 U.S.C. § 101). ***Such an amendment would typically not raise the issue of new matter, even when the specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals per se.***

Pursuant to the above guidelines by USPTO Director Kappos, the Applicant has inserted the term "non-transitory" to overcome the 35 U.S.C. § 101 rejection. The

Applicant notes that, as mentioned by Director Kappos above, such an amendment does not raise the issue of new matter since a signal per se is not the only viable embodiment (e.g., see section A above).

Therefore, the Applicant submits that the rejection of claims 10-18 under 35 U.S.C. § 101 has been overcome and claims 11-20 and 34-35 are allowable.

REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385,

1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

III. The Proposed Combination of Novak and Foreman Does Not Render Claims 1-7, 10, 11-17, 20, 21-27, 30-32, 34 and 36 Unpatentable

A. Independent Claims 1, 11 and 21

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Novak and Foreman does not disclose or suggest at least the limitation of "editing, at said first geographic location, previously created metadata associated with said media content, said editing based on said additional media content," as recited by the Applicant in independent claim 1.

The Office Action states the following:

In reference to Claim 1, Novak teaches a method for producing and delivering media content (as shown in Figs. 4 and 11; with further reference to the descriptions of Paragraphs [0056-0060; 0077-0086]), the method comprising:

establishing a personal television channel at a first geographic location ("Joe's TV Channel" as shown in Figs. 6-9 created by the method of Figs. 4 and 11; With further reference to the operations of Upload Source 122, as described in Paragraphs [0039, 0040, 0041, 0046, 0055, 0056, 0068, 0070, 0074, and 0080]), said personal television channel associated with existing media content ("Joe's TV Channel" with

associated with media objects, as shown in Fig. 7 and described in Paragraph [0039,0064]);

creating metadata associated with said existing media content (Fields 706 of Fig. 7 allow an individual to enter media object information or preferences, such as identifiers for date, time slot, media object identifier (10), media object description, or file type, as described in Paragraph [0063-0067]);

However, Novak does not clearly disclose modifying said existing media content with additional media content to produce a media program, wherein said metadata is created previously to said modifying; and editing, at said first geographic location, said previously created metadata associated with said media content, said editing based on said additional media content.

In a similar field of invention, Foreman teaches a graphical user interface for producing a video program using planning, capturing, editing, and recording functions (Abstract, Col. 4 Lines 16-33). Foreman further discloses the Interface 56 of Fig. 9, which allows a user to modify existing media content with additional media content such as transitions between clips (using effects tab Interface 153, as described in Col. 15 Lines 13-39; with further reference to Fig. 10), titles (using titles tab Interface 154, as described in Col. 15 Line 40-Col. 16 Line 7; with further reference to Fig. 11), and sounds such as voice-over commentary (using sound tab Interface 155, as described in Col. 16 Lines 8-27; with further reference to Fig. 12 and Interface 220). Additionally, Fig. 16 of Forman [sic] demonstrates "an example operation in which the clip descriptions and shot descriptions are synchronized" (Col. 10 Lines 56-58). In particular, at Step 226 of Fig. 16 metadata is associated with a media program ("Associate Data File With a Clip" of Fig. 16, as described in Col. 10 Lines 60-65). Then at Step 230, a process of editing the previously created metadata (from Step 226) is performed based on additional media content ("description modifies its duration and pointer to reference the new clip description", as shown in Fig. 16 and described in Col. 10 Line 65-Col. 11 Line 2; with further reference to Col. 11 Line 3-Col. 12 Line 31).

Both Novak and Foreman teach methods and systems for generating a media program from existing media content with associated metadata. Novak discloses a method of allowing an individual to control aspects of the media program such as content type, length, sequence, and

availability (Paragraph [0025, 0063-0067]). Foreman discloses a method similar to Novak and further provides an interface allowing a user to modify aspects of individual clips with additional content such as transitions and voice-over commentary (as presented above). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of personal media program generation taught by Novak with the method of modifying media content with additional content, as taught by Foreman, in order to provide the user with the ability to further personalize the media presentation with content such as voice-over commentary.

See Office Action at pages 8-10. In the above argument, the Examiner has equated Applicant's modifying of the existing media content to Novak's completion of fields 706 (entering media object information or preferences). The Applicant respectfully disagrees and points out that entering of the media object information and preferences do not include any modification to the related media content. In other words, there really isn't any modifying of existing media content by Novak's user interface 702. Novak's content, as created by the upload source, stays the same and related information and preferences are added only for purposes of organizing the synthetic channel.

Furthermore, the Examiner has equated Applicant's editing of metadata with Novak's customization of fields 706, as described in paragraphs 0064-0067 and Fig. 7 of the reference. More specifically, the Examiner alleges that the information described by headings 704 (e.g., date, time slot, file type, media object description, etc) is equivalent to Applicant's metadata. Even if we assume, arguendo, that the headings 704 are metadata for the corresponding media files, the Final Office Action is still

deficient. More specifically, the information described by headings 704 is not “previously created metadata.” Fig. 7 of Novak illustrates the user interface that can be used to create the synthetic channel. Obviously, the information described by headings 704 is being currently created by the user interface in the process of setting up the synthetic channel, and it is not previously existing (or previously created). At most, Novak, in Fig. 7, discloses creation of new metadata, not modification/editing of previously created metadata.

Furthermore, even if we assume, arguendo, that Fig. 7 illustrates editing of “previously created metadata”, the Final Office Action is still deficient. More specifically, **Novak, including Fig. 7, does not disclose that such editing of metadata is based on the additional media content used to modify the existing media content.**

It seems the Examiner agrees with the above arguments as he states the following in page 8 of the Office Action:

However, Novak does not clearly disclose modifying said existing media content with additional media content to produce a media program, wherein said metadata is created previously to said modifying; and editing, at said first geographic location, said previously created metadata associated with said media content, said editing based on said additional media content.

The Examiner then relies for support on Foreman. Foreman, however, is deficient for at least the following reasons:

1. Foreman’s Storyboard Descriptions Are Not Previously Created Metadata Associated with Media Content

Foreman discloses a graphical user interface for a computer-assisted motion video editing system. More specifically, computer system 20 offers a “storyboard” interface 52, a “bring video in” interface 54, an “edit movie” interface 56, and a “send movie out” interface 58.

The storyboard interface 52 enables a user to plan the motion video program to be prepared. More specifically, the storyboard interface 52 can be represented by the data structure 86 of shot descriptions 87 (Fig. 6), which stores a pre-planned outline for each shot (e.g., shot title, filming/editing tips, duration and pointer to the video file). In other words, the storyboard interface 52 is used by the user in the planning stage of video production, where the user makes an outline (or a story line) by selecting how many shots his video will have, what titles, etc. **All the steps of creating the storyboard shot descriptions 87, however, are created prior to bringing the video in** (which is the subsequent step done by interface 54). *See, e.g.,* Foreman, at col. 7, line 25 – col. 8, line 30. **Consequently, when the storyboard shot descriptions 87 are created, they are not metadata (or “previously created metadata) as they are not associated with any video data (as there is no video brought in for editing).**

2. Foreman’s FIG. 16 Does Not Disclose Editing of Previously Created Metadata

The Applicant points out that **the metadata** related to the video file (after the video file is brought in via interface 54) **is represented by data structure 88** (fig. 7). Referring to Foreman’s Fig. 16, after video data is captured in steps 222 and 224, a

data structure 88 is created, which describes the captured video clip. The Applicant notes that the storyboard shots descriptions have already been created prior to capturing the video. After the video clip is captured and its data structure 88 is created, at step 228, a message is sent to the storyboard indicating that a clip with certain duration was created. Since the captured clip is for a specific shot description (87), the storyboard, in step 230, records the clip duration (98) and the pointer (100) to the captured clip location. It is at this point (in step 230) that the specific shot description (87) is in fact associated with actual (captured) video data. As explained above, prior to capturing the video data, the storyboard shot descriptions 87 simply form an outline and cannot be considered a metadata as they are not actually associated with any video data. Therefore, Foreman (in steps 228-230 of Fig. 16) does not disclose any editing of previously created metadata as there was simply no metadata prior to the actual capturing of the video data.

To summarize:

- At step 220 (Fig. 16), a "data file" for the video information is created. However, at this point of the "data file" creation, no actual video clip has been taken/captured. Therefore, since the "data file" is not associated with any media/video, it does **not** qualify as metadata.
- At step 230, the "shot" description within the storyboard interface 52 is updated with the clip duration and pointer to the newly created video clip.

More specifically, step 230 updates fields 98 and 100 (fig. 6) within the storyboard 86. Step 230, however, does **not** update in any way the data file (i.e., the alleged "metadata") associated with the captured video clip. In addition, Foreman (in step 230 or any other step) does not disclose that the data file (i.e., the alleged "metadata") associated with the captured video clip is edited based on additional media content.

- The Examiner also relies on Fig. 9 of Foreman (and its corresponding description at col. 11, l. 3 – col. 12, l. 27). However, Fig. 9 describes several selectable interfaces for performing a detailed editing of the video program, and **not** the data file (i.e., the alleged "metadata") created in step 220

The Examiner is also referred for additional clarification to the arguments stated in Section I herein above.

Therefore, the Applicant maintains that the combination of Novak and Foreman does not disclose or suggest at least the limitation of "editing, at said first geographic location, previously created metadata associated with said media content, said editing based on said additional media content," as recited by the Applicant in independent claim 1.

Accordingly, the proposed combination of Novak and Foreman does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable. Independent claims 11

and 21 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11 and 21 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-7, 10, 12-17, 20, 22-27, 30-32, 34 and 36

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Novak in view of Foreman has been overcome and requests that the rejection be withdrawn. Additionally, claims 2-7, 10, 12-17, 20, 22-27, 30-32, 34 and 36 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-7, 10, 12-17, 20, 22-27, 30-32, 34 and 36.

IV. The Proposed Combination of Novak, Foreman and Weber Does Not Render Claims 8-9, 18-19 and 28-29 Unpatentable

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being anticipated by the

combination of Novak and Foreman has been overcome and requests that the rejection be withdrawn. Additionally, since the additional cited reference (Weber) does not overcome the deficiencies of Novak and Foreman, claims 8-9, 18-19 and 28-29 depend from independent claims 1, 11 and 21, respectively, and are, consequently, also respectfully submitted to be allowable based on the above arguments. The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 8-9, 18-19 and 28-29.

V. The Proposed Combination of Novak, Foreman and Applicant's admission of fact Does Not Render Claims 33, 35 and 37 Unpatentable

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 11 and 21 under 35 U.S.C. § 103(a) as being anticipated by the combination of Novak and Foreman has been overcome and requests that the rejection be withdrawn. Additionally, since the additional cited reference (Applicant's admission of fact) does not overcome the deficiencies of Novak and Foreman, claims 33, 35 and 37 depend from independent claim 21 and are, consequently, also respectfully submitted to be allowable based on the above arguments. The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 33, 35 and 37.

In general, the Office Action makes various statements regarding claims 1-37 and the cited references, which statements are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-37 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: 27-AUG-2010

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